

On August 5, 2003 appellant, then a 27-year-old sales clerk, filed a notice of traumatic injury alleging that on August 4, 2003 she “passed out in the store” and then hit her head on the floor. Appellant alleged that she sustained an injury to her head. Appellant sought medical treatment on August 4, 2003, the date of injury and Dr. Howard Y. Bernstein, a physician Board-certified in emergency medicine, found appellant had a syncopal episode at work and diagnosed

a skull fracture. Appellant's supervisor disputed the claim, noting that on June 30, 2003 appellant reported to work with severe facial bruising and a black eye. She further noted on July 18, 2003 that appellant requested sick leave because she was nauseated due to her ear draining.

The Office requested additional factual and medical information from appellant in a letter dated August 25, 2003. Appellant submitted additional medical evidence attributing vertigo and a loss of hearing in her left ear to her skull fracture. By decision dated September 26, 2003, the Office denied appellant's claim finding that the medical evidence was not sufficiently detailed to establish a causal relationship between appellant's diagnosed conditions and factors of her employment.¹

LEGAL PRECEDENT

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.² The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.³ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁴

¹ Following the Office's September 26, 2003 decision, appellant submitted additional new evidence before the Office. As the Office did not consider this evidence in reaching a final decision, the Board may not review this evidence for the first time on appeal. 20 C.F.R. § 501.3(d)(2).

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁴ *James Mack*, 43 ECAB 321 (1991).

ANALYSIS

The Office has accepted that appellant had an unexplained fall on August 4, 2003 and struck her head on the floor of the employing establishment.⁵ However, the Office properly found that appellant did not establish the medical conditions for which compensation is claimed as a result of the August 4, 2003 incident, skull fracture, concussion, vertigo or loss of hearing in the left ear.

Appellant sought medical treatment on August 4, 2003 and Dr. Bernstein, a physician Board-certified in emergency medicine, reported that appellant had a syncopal episode at the employing establishment and that she struck her head when she fell. He diagnosed syncope and skull fracture. Dr. Bernstein did not provide any opinion on the causal relationship between appellant's accepted employment incident and her diagnosed conditions. The Office's procedure manual provides: "*In clear cut traumatic injury claims*, where the fact of injury is established and is clearly competent to cause the condition described (for instance, a worker falls from a scaffold and breaks an arm) no opinion is needed. The physician's affirmative statement is sufficient to accept the claim."⁶ Although there is an accurate description of the work incident and a diagnosed condition, an affirmative statement from Dr. Bernstein, the evidence in the record is not clear whether appellant's fall at work, a faint, was competent to cause her diagnosed condition of skull fracture. Furthermore, appellant's supervisor disputed the claim describing preexisting traumas to appellant's head. Therefore, this report is not sufficient to establish appellant's claim for a skull fracture due to her fall.

In a form report dated August 13, 2003, Dr. Shahzad Hasan, a Board-certified internist, indicated with a check mark "yes" that appellant provided a history of passing out at the employing establishment and hitting her head. He described appellant's clinical findings as a nondisplaced fracture of the skull and diagnosed a concussion. Dr. Hasan also noted that appellant had decreased hearing in her left ear. He found that appellant was totally disabled. Dr. Hasan also failed to provide any opinion on the causal relationship between appellant's faint at the employing establishment and her physical findings of skull fracture, concussion or loss of hearing in the left ear. Furthermore, he did not indicate that he was aware of appellant's previous head injury or ear condition. Without a complete factual background and an opinion that appellant's fall or faint at work was competent to produce the diagnosed conditions, this report is not sufficient to meet appellant's burden of proof.

In a report dated August 20, 2003, Dr. Samuel Goldman, a Board-certified internist, stated that appellant suffered a head injury at work. He stated, "A box struck her left ear and jaw. Initially it was felt [that] she had just suffered some blunt trauma, but subsequently she had

⁵ There is no evidence in the record that appellant's fall on August 4, 2003 was due to an idiopathic condition. The Office has the burden of proof to submit medical evidence showing the existence of a personal, nonoccupational pathology if it chooses to make a finding that a given fall is idiopathic in nature. The fact that the cause of a particular fall cannot be determined does not establish that it was due to an idiopathic condition and if the record does not establish a particular fall was due to an idiopathic condition, it must be considered as merely an unexplained fall, which is covered under the Federal Employees' Compensation Act. 5 U.S.C. §§ 8101-8193; *Deborah A. Perry*, Docket No. 02-2225 (issued June 19, 2003).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3.d(2) (June 1995).

a ruptured ear drum with syncope resulting in further head trauma.” Dr. Goldman found that appellant had vertigo and absent hearing in her left ear. He diagnosed vertigo secondary to trauma. Dr. Goldman did not base his history of injury on a single fall. Instead he indicated that appellant experienced two separate head traumas, the first when a box struck her ear and the second when appellant’s ear drum ruptured resulting in syncope with further head trauma. Due to this divergent description of the employment incident, Dr. Goldman’s report is not based on a consistent history of injury. Furthermore, he did not describe appellant’s nonemployment-related head injuries nor her preexisting ear condition. As Dr. Goldman did not provide a complete and accurate medical history and history of injury and as he also failed to provide an opinion on the causal relationship between appellant’s diagnosed conditions of vertigo and absent hearing in the left ear and her faint at work, his report is not sufficient to meet appellant’s burden of proof.

The medical evidence in the record does not provide a consistent history of injury, an opinion on the causal relationship between appellant’s faint on August 4, 2003 and the medical conditions for which she was claiming compensation, skull fracture, concussion, vertigo and loss of hearing in the left ear. Due to these deficits in the medical evidence, appellant failed to meet her burden of proof and the Office properly denied her claim.

CONCLUSION

Appellant did not submit sufficient medical opinion evidence based on an accurate factual background to establish that her work-related injury on August 4, 2003 was sufficient to result in the conditions for which compensation was claimed. Therefore appellant failed to meet her burden of proof and the Office properly denied her claim.

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: February 13, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member